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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 582

EUGENE E. CORDAK, d/b/a A B DENTAL PLATE LABORATORY and ANTHONY J. VOLINO, d/b/a GRAND & ASHLAND DENTAL LABORATORY,

Appellants,

vs.

THE REUBEN H. DONNELLEY CORPORATION, an Illinois corporation,

Appellee,

and

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. ILLINOIS STATE DENTAL SOCIETY, an Illinois corporation not for profit, JAMES C. DONELAN, PAUL W. CLOPPER and JOSEPH S. ZIELINSKI, individually and as officers of the ILLINOIS STATE DENTAL SOCIETY, and ROBERT J. POLLOCK, HERMAN R. WENGER, JOSEPH T. BROPHY, ARTHUR M. DUXLER and FREDERICK D. MOORE, individually and as members of the Joint Commission on Legislation and Law Enforcement of ILLINOIS STATE DENTAL SOCIETY,

Intervenors-Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL OR TO AFFIRM JUDGMENT.

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THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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MAY IT PLEASE THE COURT:

The principal question presented by this appeal is whether appellants have been denied rights secured under the First Amendment to the United States Constitution. It is

appellants' position that the amendment to Section 5a of the Illinois Dental Practice Act unjustifiably deprives them of their pre-existing freedom to advise their lawful customers of relevant facts about their business through printed media of their own choosing. Intervenors-appellees' ("appellees") motion entirely overlooks this question. The issue to be decided, should the Court grant a hearing on the merits, does not relate to whether the dental profession has benefited by the challenged amendment.

Except for *Amsel* v. *Brooks*, 141 Conn. 288, 106 Atl. 2d, 152 (1954), none of the cases cited by appellees considered the extent to which the State may impose a prior restraint on a businessman's freedom to communicate with his customers.

In the *Amsel* case, dental laboratory technicians brought suit for a declaratory judgment seeking to invalidate the Connecticut Dental Practice Act because of the provision which prohibited advertising even though the dental laboratory did not offer services to the public. The Court held this provision invalid:

> "* * * The language of this prohibition is all inclusive. The advertising prohibited is not limited to that which would announce a willingness to render services in controvention of the law. * * *
>
> * * * * *
>
> "* * * If this law is valid, those in the business generally performed in a dental laboratory are prohibited from doing anything to make known the availability of their services. * * * The connection between such a drastic and unreasonable regulation and the public welfare is so tenuous that * * * the portion of the statute relating to advertising cannot be legally justified. We hold the portion to be unconstitutional" 141 Conn. at ....., 106 Atl. 2d at 158.

Appellants have selected the Chicago Red Book as the media wherein they seek to make known the availability of

their services. The evidence is undisputed that the use of this publication is both effective and economical. There is no evidence to show that appellants' announcements therein are directed at anyone but licensed dentists. The mere use of a telephone directory does not establish that appellants' announcements offer services to the public.

It does not follow that because the Red Book circulates among the public generally, each and every listing therein is directed at the general public. Clearly, the general public does not read the 2,330 pages contained in that directory.

When appellants' announcements are examined, it becomes clear that they do not offer services to the public. They merely advise their customers of such facts as "change of management, change in name, former location, hours of business, speed and efficiency of service, number of years in business, experience of personnel, type of materials used and the like" (Juris. State., 8).

Appellees contend that it is immaterial in any event whether appellants utilize the Chicago Red Book since the statute permits them to advertise in trade journals and professional publications (Br., 7). Appellants do not consider it immaterial whether they may be permitted to make their own choice of advertising media. The record is barren of any proof to show that trade journals or professional publications are an effective or economical substitute for the Red Book. Moreover, the challenged parts of the statute insofar as they prohibit advertising in the Red Book while permitting it in other publications make an arbitrary and unjustified classification.

Appellants concede that the State may prohibit advertising *offering* their services to the public. The amendment to the Dental Practice Act, however, prohibits any and all communications with the public whether services are offered or not. This amendment bears no reasonable relation to the protection of public health.

The motion of appellees does not discuss the substantial question presented—namely, whether the curtailment of appellants' individual right to choose media in which to announce legitimate facts about their lawful business is a denial of their right to speak freely within the First Amendment.

In fact, appellees conclude their argument with the assertion that the present case involves statutory regulation of a profession directly related to public health (Br., 16). The validity of the regulation of dentistry is not involved. What is involved is the validity of regulation detailing the scope, form and content of advertising by businessmen conducting a lawful and legitimate trade. This question has not heretofore been considered by the Court.

WHEREFORE, it is respectfully requested that appellees' motion be denied for the reason that the Court has jurisdiction of this appeal, and should exercise such jurisdiction in this cause.

Respectfully submitted,

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